THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.22690 OF 2003 and 383 OF 2004

DATED JANUARY, 2007

Between

M/s.Siva Shankar Granites (P) Limited, rep.by
its Managing Director, Sri G.S.P.Veera Reddy.

... Petitioner

AND

The Government of Andhra Pradesh, rep.by its Secretary,
Industries & Commerce Department, Secretariat, Hyderabad
and others.

...Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22690 OF 2003 AND 383 OF 2004

COMMON ORDER:

The fratricidal business war between two brothers for getting mining lease for granite in respect of the same land has led to filing of these writ petitions. M/s.Siva Shankar Granites (P) Limited is the petitioner in both the writ petitions. The said company is aggrieved by the grant of NOC to fourth respondent company as well as the order of the Government. The petitioner company M/s.Siva Shankar Granites (P) Limited is headed by elder brother G.S.P.Veera Reddy, S/o G.Veera Reddy, as Managing Director of the petitioner company. The fourth respondent, namely, M/s.Veerabhadra Minerals is controlled by younger brother, G.V.Pratap Reddy, S/o G.Veera Reddy, as its Managing Director. Both the companies have Hyderabad address as registered offices. W.P.No.22690 of 2003 is filed against the orders, dated 15.10.2003 of Government of Andhra Pradesh, whereunder the grant of lease in favour of petitioner company by the Director of Mines and Geology (hereafter called, the Director) for an extent of 1.437 Hectares in survey No.581(P) of Chimakurthy village of Prakasam District was set aside remanding the matter to the Director for fresh consideration of the rival claims. The second writ petition being W.P.No.383 of 2004 is filed questioning the proceeding/order, dated 06.12.2003 issued by the Mandal Revenue Officer (MRO), Chimakurthy, whereunder the MRO while cancelling the

proceedings, dated 26.11.2003, observed that the earlier proceedings, dated 01.11.2003 in favour of fourth respondent may be implemented. Be it noted, in proceedings, dated 01.11.2003, NOC was given in favour of the fourth respondent company.

The brief fact of the matter is as follows. The petitioner company is allegedly owner of land admeasuring Acs.3.30 cents in survey No.581(P) situated at Chimakurthy village. The property was allegedly purchased under registered sale deed from M/s.Midwest Granites. The petitioner allegedly obtained the consent and relinquishment deed executed by owner of the land, Sri Syed Abdul Kabir, for the remaining extent of Acs.2.30 and submitted an application to the Assistant Director of Mines and Geology for grant of prospective licence over an extent of Acs.5.60. The same was forwarded to MRO. After enquiry, the MRO issued NOC vide proceedings, dated 20.11.2000. After receiving NOC, a prospective licence was granted by proceedings, dated 17.03.2001. A mining lease was also granted for the land allegedly belonging to the petitioner over an extent of 1.431 Hectares in survey No.581(P). For the remaining extent of Acs.0.25 the lease was granted based on the consent and relinquishment deed allegedly executed by Sri Syed Abdul Kabir.

After survey and prospecting, the petitioner submitted an application for grant of quarry lease on 07.12.2001. The Director issued proceedings, dated 08.05.2003 accepting proposal subject to submission of the approved mining plan. Subsequently, the Director granted mining lease on 30.06.2003 for twenty years over an extent of 1.437 Hectares. In the meanwhile, the MRO passed orders on 26.06.2003 cancelling the NOC given to the petitioner earlier on 20.11.2000. The petitioner filed W.P.No.13933 of 2003 before this Court. As MRO issued NOC, dated 17.07.2003 in favour of fourth respondent, another writ petition being W.P.No.14800 of 2003 was also filed. By order, dated 25.07.2003, this Court allowed W.P.No.13933 of 2003 and remitted the matter to MRO to decide the question as to classification of the land and its availability for grant of mining lease after giving opportunity to the petitioner and the fourth respondent.

The fourth respondent preferred a revision petition under Rule 35-A of the A.P.Minor Mineral Concession Rules, 1966 (the Rules, for brevity). By Memo No.13777/M.II(1)/2003-2005, dated 15.10.2003, Government set aside the proceedings of the Director, dated 30.06.2003, whereunder mining lease was granted to petitioner company and remitted the matter to the Director for fresh consideration. In the related proceedings before the MRO also the petitioner company tasted failure. The MRO as noticed earlier cancelled NOC given to the petitioner company and conformed the NOC given to the fourth company. Aggrieved by the Government Memo, dated 15.10.2003, the first writ petition is filed. The proceeding of

the MRO is challenged in the second writ petition.

These matters were listed at the interlocutory stage. As requested by the learned counsel for the petitioner and the learned counsel for the fourth respondent, the matters were heard finally at that stage itself. Before noticing the submissions, a brief reference to the allegations/averments in the counter affidavit of the fourth respondent may be made.

In the first writ petition, respondents 1 and 4 filed separate counter affidavits and in the second writ petition, the fourth respondent filed counter affidavit. In his counter, first respondent states that against the proceedings, dated 30.06.2003 issued by the Director granting lease to the petitioner, fourth respondent filed a revision petition before the Government *inter alia* alleging that the land in survey No.581(P) of Chimakurthy village was allotted to Pratap Reddy, Managing Director of fourth respondent, for which an amount of Rs.83,00,000/- was paid to Veera Reddy. When the first respondent obtained prospecting licence, the fourth respondent filed W.P.No.82 of 2002 before this Court and O.S.Nos.205 of 2001 and O.S.No.91 of 2003 on the file of the Court of the Senior Civil Judge, Ongole. The petitioner also filed O.S.No.12 of 2003 on the file of the Court of the District Judge, Ongole and obtained *ad interim* injunction, which was subsequently vacated. Aggrieved by the same, the petitioner preferred C.M.A.No.2133 of 2003 before this Court, but no injunction was granted. In the meanwhile, the MRO by letter, dated 26.06.2003 cancelled the NOC issued to the petitioner, which was challenged in W.P.No.13933 of 2003. This Court allowed the same and sent back the matter to the MRO. Therefore, the Government in exercise of its powers of revision remitted the matter to the Director for fresh consideration.

In the counter affidavit filed by the fourth respondent, the allegations made by the petitioner that he is the owner of land in survey No.581(P) is denied. It is stated that an extent of Acs.3.30 in survey No.581(P) was purchased in the name of the petitioner under registered sale deed, dated 16.09.2000 from M/s.Midwest Granites. However, the in the family partition, vide MoU, dated 02.07.2001, the elder brother agreed to give the said property to the younger brother as a result of which, the land was allotted to the fourth respondent. Even though the suits filed by the petitioner and respondent were pending, the Director granted lease in favour of the petitioner. Aggrieved by which, the fourth respondent preferred revision petition.

In the counter affidavit filed in W.P.No.383 of 2004, various allegations made by the petitioner that the petitioner was not given notice and that the *ex parte* order was passed by MRO cancelling the NOC given to it are denied.

Learned counsel for the petitioner submits that the petitioner was given prospecting licence after verifying the title to the land and also taking into consideration the consent given by the previous owner Syed Abdul Kabir. Therefore, the petitioner being the holder of prospecting licence gets priority in grant of quarry lease. At that stage, after conducting enquiry, the MRO granted NOC based on which the Director granted quarry lease. The Government without applying the mind set aside the quarry lease, which is unsustainable. She, secondly, submits that the order of cancellation of NOC by MRO was set aside by this Court in W.P.No.13933 of 2003. When the matter was re-enquired by the MRO, no notice was issued and an *ex parte* order was passed withdrawing NOC issued to the petitioner earlier confirming the NOC issued to the fourth respondent, which is unsustainable as it violates principles of natural justice.

Learned Assistant Government Pleader for Industries reiterated the submissions contained in counter affidavits. The learned counsel for the fourth respondent submits that there was no consent or relinquishment by registered document by Syed Abdul Kabir. Though the property was initially purchased in the name of the petitioner from M/s.Midwest Granites, by reason of Memorandum of Understanding evidencing family partition, subject land was allotted to the Managing Director of fourth respondent, that the Managing Director of the petitioner company received a sum of Rs.83,00,000/- and therefore, the grant of NOC and the grant of lease based on such NOC is *ex facie* illegal. He submits that after the remand by this Court, the MRO again considered and cancelled the NOC granted to the petitioner ordering implementation of the NOC granted to the fourth respondent and therefore, it is for the Director of Mines and Geology to consider all the issues before granting licence.

Two issues are required to be considered. The first one is whether the MRO was justified in cancelling the NOC, dated 26.11.2003 given to the petitioner and confirming NOC, dated 01.11.2003 issued to the fourth respondent. During the enquiry, the MRO found that G.V.Pratap Reddy, Managing Director of fourth respondent purchased the land admeasuring Acs.2.30 in survey No.581(P) out of Acs.10.20 from Syed Abdul Kabir under a registered document No.211, dated 24.01.2001. He then submitted an application for grant of lease for black granite. As per the procedure, the application was forwarded to the MRO, who made enquiries and granted NOC in favour of fourth respondent duly cancelling the earlier NOC given to the petitioner based on the consent of Kabir on Rs.100/- stamp paper. The same was challenged in writ petition being W.P.No.13933 of 2003, which was allowed and the matter was sent back to MRO. After remand, the MRO issued notices to the petitioner and fourth respondent. During the enquiry, Karuvadi Venkateswarlu

appeared on behalf of the petitioner and produced the consent letter on Rs.100/- stamp paper whereas Shaik Khasi Saheb and the Manager of the fourth respondent appeared and produced registered document, under which fourth respondent acquired rights. In the meanwhile, the fourth respondent also submitted a review petition in which notice was issued to the petitioner. In the enquiry, Karuvadi Venkateswarlu, however, did not appear. Therefore, after considering the review petition and other documents, the MRO cancelled the NOC issued to the petitioner and confirmed the NOC issued to the fourth respondent. While arriving at such a decision, MRO has followed a very fair procedure adverted to all the relevant documents and came to a reasonable conclusion. The submission that the MRO passed orders without notice to the petitioner cannot be accepted. As mentioned hereinabove, a representative of the petitioner appeared and produced the necessary documents relied on, which was considered by the MRO.

As at now, it is only the fourth respondent, who has got NOC in respect of the land admeasuring Acs.2.30 in survey No.581(P). Notwithstanding the suits pending between the brothers, *prima facie* having regard to the registered document obtained by the Managing Director of fourth respondent from Syed Abdul Kabir, the Government also justified in remitting the matter to the Director for fresh consideration. Even now, nothing prevents the petitioner to raise objections for grant of quarry lease to the fourth respondent or seek grant of quarry lease by producing necessary evidence regarding ownership. Even if there is a property dispute pending in the civil Courts, unless and until there is injunction operating against the official respondents as well as the fourth respondent, the pendency of the suits itself cannot be a hurdle while the Director considers the matter. In that view of the matter, the Government has come to the correct conclusion in setting aside the lease granted to the petitioner and remanding the matter to the Director of Mines and Geology.

The writ petitions are devoid of merit and are accordingly dismissed. No costs.

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(V.V.S.RAO,J)

.01.2007.

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